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09/602,018	06/23/2000	Surya Raghu	2973-Z	9210

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EXAMINER

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ART UNIT PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/602,018
Filing Date: June 23, 2000
Appellant(s): RAGHU ET AL.

Jim Zegeer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 28, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The rejection under 35 U.S.C. 112, first paragraph is not an issue because the amendment filed on March 1, 2002 deleted the term "angulated" from the claims, and therefore, the rejection is moot.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-5 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,776,460	Fichter	12-1973
4,184,636	Bauer	1-1980
4,662,568	Bauer	5-1987

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 2-5 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "a pair of liquid outlet passages" in line 6. This appears to be a double inclusion of the "pair of outlet passages" in claim 1, line 8.

The term "smoothly" in claims 2 and 5 is a relative term which renders the claims indefinite. The term "smoothly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is uncertain how the recitation "smoothly extended" further limits the passages.

Claims 1-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (4,662,568) in view of Fichter (3,776,460).

With respect to claim 1,

Bauer discloses a therapeutic water nozzle comprising: a housing 36, 38 having an inlet 14; a fluidic oscillator having an oscillation chamber 10 and a power nozzle

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(outlet of inlet 14 into chamber 10); a first jet of water (flow arrow out of inlet 14 as shown in figure 1A); a pair of outlet passages (passages above and below the power nozzle formed by walls 18 and 19 as shown in figure 1A); outlet (common outlet) 22; an air passage 42. Bauer does not disclose a therapeutic spa tub.

Fichter discloses, in column 1, lines 5-14, a fluidic oscillator used in whirlpool baths. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have used the fluidic oscillator of Bauer in a therapeutic spa tub as taught by Fichter for increased atomization.

With respect to claim 2,

Bauer further discloses a reversing wall 16. Bauer also cites his U.S. Patent No. 4,184,636 which discloses sweep angle and frequencies in column 9, line 1 through column 10 line 20 (in particular). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have optimized the frequency and sweep angle in the device of Bauer dependent on application criteria.

With respect to claim 3,

Bauer further discloses an outer wall 18, 20.

With respect to claim 4,

Bauer further discloses a pair of sidewalls 28, 30.

With respect to claim 5,

Bauer discloses a therapeutic water nozzle comprising: a housing 36, 38 having an inlet 14; a fluidic oscillator having an oscillation chamber 10 and a power nozzle (outlet of inlet 14 into chamber 10); a first jet of water (flow arrow out of inlet 14 as

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shown in figure 1A); a pair of outlets (passages above and below the power nozzle formed by walls 18 and 19 as shown in figure 1A); a reversing wall 16; a common outlet 22. Bauer does not disclose a therapeutic spa tub.

Fichter discloses, in column 1, lines 5-14, a fluidic oscillator used in whirlpool baths. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have used the fluidic oscillator of Bauer in a therapeutic spa tub as taught by Fichter for increased atomization.

Bauer also cites his U.S. Patent No. 4,184,636 which discloses frequencies in column 10, lines 3-20 (in particular). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have optimized the frequency in the device of Bauer dependent on application criteria.

(11) Response to Argument

In response to appellant's argument directed the rejection of claims 2-5 under 35 U.S.C. 112, second paragraph for the recitation of the relative term "smoothly" in claims 2 and 5, applicant's argument that the specification discloses "smooth without any sharp directional changes" is not commensurate in scope with the claimed invention.

Additionally, the claimed invention does not exclude sharp directional changes.

In response to appellant's argument that Bauer does not disclose a spray nozzle as being therapeutic, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091,

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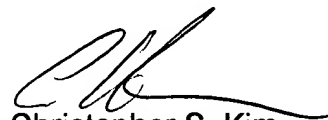
231 USPQ 375 (Fed. Cir. 1986). Fichter discloses, in column 1, lines 5-15, the use of fluidic oscillator in a whirlpool bath. As such, it inherently is therapeutic.

In response to appellant's argument on page 8, lines 9-19 of the Brief, it appears that appellant is arguing that the combination would render Bauer's device inoperative. First, Bauer does not prohibit the issuing of pulsating pulses of water into a spa tub below the waterline. Second, there is no claimed limitation which requires the nozzles (at least the common outlet) to be positioned below the waterline.

In response to the remainder of appellant's argument, which is direct to Fichter, Fichter is only relied on for the teaching of using a fluidic oscillator in a whirlpool bath (column 1, lines 5-15).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Christopher S. Kim
Examiner
Art Unit 3752


CK

August 30, 2002

Conferees

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